

35 U.S.C. §102

Claims 1-3, 6, 13 were rejected under 35 U.S.C. §102(b) as being anticipated by Mozes *et al.* The Examiner asserts that “[t]he claims are drawn hydrophobic peptide and therapeutic composition thereof which the below peptide are within the scope of the present claims.” The Examiner further asserts that “[t]he reference teach the peptide LLVIVELIPSTSSAV that read on the claimed peptide of claim 1 (see page 11, line 30-37). Note that peptide of the reference have at least 50% hydrophobic amino acid, and the B variable corresponds to a glutamic acid, as claimed in claim 3 and 6 of the instant application. The reference further teaches pharmaceutical composition for the treatment of myasthenia gravis (see page 11, lines 30-37). It is well known in the art myasthenia gravis is a disorder in which T-cells are involved. Thus, the reference anticipates the claimed invention.”

The Examiner states that the language of “T-cell antigen receptor (TCR) function” is an intended use limitation and intended use or field of use. However, intended use limitation and intended use or field of use for the invention generally will not limit the scope of a claim. Moreover, where the claimed and prior art products are identical or substantially identical in structure or composition, a prima facie case of either anticipation or obviousness has been established. *In re Best*, 195 U.S.P.Q. 430, 433 (CCPA 1977). “When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not.” *In re Spada*, 15 U.S.P.Q. 2d 1655, 1658 (Fed. Cir. 1990). Therefore, the prima facie case can be rebutted by evidence showing that the prior art products did not necessarily possess the characteristics of the claimed product. *In re Best, supra*.

Applicant respectfully traverses the rejection. Not only is the present invention directed to peptides that inhibit T-cell antigen receptor (TCR) function by interfering with the assembly

of this receptor but the amendment to claim 1 amends the length of X to be consisting of between 2 and 6 amino acids.

In contrast, in addition to arguments set forth in the previous Office Action Response, the Mozes *et al.* peptide LLVIVELIPSTSSAV contains more than 6 amino acids in what would correspond to the X portion of the peptide.

Mozes <i>et al.</i>	LLVIV=5 amino acids	E	LIPSTSSAV= <u>9</u> amino acids
Current Application	X=hydrophobic amino acid or hydrophobic peptide sequence comprising between 2 and 6 amino acids	Z=charged amino acid	X=hydrophobic amino acid or hydrophobic peptide sequence comprising between 2 and 6 amino acids

Therefore, the Mozes *et al.* peptide **cannot** anticipate the current claim 1.

This rejection should now be overcome. Claims 3, 6, 13 are dependent on claim 1, thus these rejections should be overcome as well.

Attached hereto is a marked-up version of the changes made to the specification and claims. The attached page is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE."

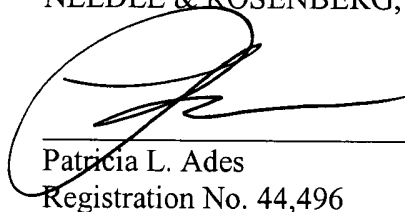
Pursuant to the above amendments and remarks, reconsideration and allowance of the pending application is believed to be warranted. The Examiner is invited and encouraged to directly contact the undersigned if such contact may enhance the efficient prosecution of this application to issue.

The undersigned believes that a three month extension of time is necessary to make this Response timely. Payment in the amount of \$460.00 for the extension of time is to be charged to a credit card and such payment is authorized by the signed, enclosed document entitled: Credit

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Card Payment Form PTO-2038. This amount is believed to be correct. Should this be in error, Applicant respectfully requests that the Office grant such time extension pursuant to 37 C.F.R. § 1.136(a) as necessary to make this Reply timely, and hereby authorizes the Office to charge any necessary fee or surcharge with respect to said time extension or any additional fees which may be required, or credit any overpayment to the deposit account of the undersigned firm of attorneys, Deposit Account 14-0629.

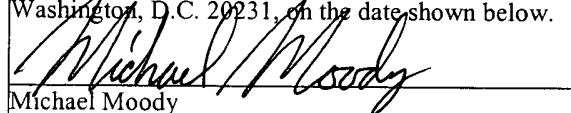
Respectfully submitted,
NEEDLE & ROSENBERG, P.C.

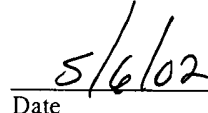

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I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail Invoice No. EL924198165US in an envelope addressed to: Box CPA, Commissioner for Patents, Washington, D.C. 20231, on the date shown below.


Michael Moody


Date

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS

1. (Twice Amended). A peptide which inhibits T-cell antigen receptor (TCR) function, wherein the peptide is of the following formula:

R1-X-Z-X-R2 in which

X is a hydrophobic amino acid or a hydrophobic peptide sequence [comprising]
consisting of between 2 and 6 amino acids

Z is a charged amino acid

R1 is NH₂ and

R2 is COOH.

- 11 (Amended). A peptide according to claim 9 [or claim 10] wherein C is a peptide sequence of 4 or 5 amino acids and includes at least one hydrophobic amino acid.

Kindly cancel claim 15.